

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ABDULLAH MOZEB	:	DETERMINATION
	:	DTA NO. 817981
for Revision of Determinations or for Refund of Cigarette	:	
Tax under Article 20 of the Tax Law for the Periods	:	
February 1, 1997 and April 1, 1998.	:	

Petitioner, Abdullah Mozeb, 301 East 204th Street, Bronx, New York 10467, filed a petition for revision of determinations or for refund of cigarette tax under Article 20 of the Tax Law for the periods February 1, 1997 and April 1, 1998.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 5 Penn Plaza , New York, New York on February 7, 2002 at 10:30 A.M. Petitioner appeared by Abdo M. Gaisi, E.A. The Division of Taxation appeared by Barbara G. Billet, Esq. (Mary Fountaine).

ISSUE

Whether petitioner is liable for the penalties imposed by the Division of Taxation for failure to register as a dealer of cigarettes and tobacco products for the years 1997 and 1998.

FINDINGS OF FACT

1. On February 21, 1997, an investigator from the Petroleum, Alcohol and Cigarette Tax Bureau of the Division of Taxation ("Division") conducted a retail inspection of Mukhter Newstand located at 301 East 204th Street, Bronx, New York. The investigator found that petitioner was selling cigarettes without a New York State certificate of registration. There were

no other violations discovered by the investigator. Petitioner, Abdullah Mozeb, the owner of the business, was present during the inspection.

2. On March 21, 1997, petitioner filed an application for a certificate of registration for 1997 with the Division. The Division issued a validated certificate on March 25, 1997.

3. On April 21, 1997, the Division issued a Notice of Determination to petitioner asserting a penalty of \$1,000.00 for the period February 1, 1997 for failure to possess a valid certificate of registration for retail sales of cigarettes and tobacco products. The penalty was imposed pursuant to Tax Law § 480-a(3)(a).

4. On April 21, 1998, investigators from the Division made a second inspection of petitioner's premises and found that petitioner was again selling cigarettes and tobacco products before he received a validated certificate of registration from the Division for 1998. The investigators found no other violations. Petitioner's son, Malleck Mozeb, was present during the second inspection. He was given an application for registration by the investigator and advised not to sell cigarettes or tobacco products until a valid certificate of registration was obtained by petitioner. On April 24, 1998 the Division received the application from petitioner for 1998 which it validated and returned to him on April 29, 1998.

5. On October 19, 1998, the Division issued a second Notice of Determination to petitioner for the period April 1, 1998, asserting an additional penalty of \$2,500.00 pursuant to Tax Law § 480-a(3)(a) for the second violation of failing to register.

6. Petitioner did not register as retail dealer of cigarettes and tobacco products for the years 1991 through 1995. He timely registered in 1996. In 1999, petitioner registered late and for the years 2000 and 2001 he filed timely renewals.

7. Petitioner does not read or write and has a limited understanding of the English language. He relied on his son and accountant for advice regarding business matters.

CONCLUSIONS OF LAW

A. Tax Law § 480-a(1)(a) provides that every retail dealer of cigarettes and tobacco products is required to register with the Division and publicly display a certificate of registration in each place of business in New York State.

Tax Law § 480-a(3)(a) provides that any retail dealer who violates the above provision shall for a first violation be liable for a civil fine not to exceed \$1,000.00 and for a second or subsequent violation within three years following a prior finding of a violation be liable for a civil fine not to exceed \$2,500.00.

B. Petitioner was an unsophisticated taxpayer without the ability to read or write and did not understand the significance and consequences of not being registered on January 1st of each calendar year beginning in 1991. At the time of the retail inspections, petitioner had not obtained valid certificates of registration as required by Tax Law § 480-a(1)(a) and is therefore, liable for the penalties imposed by Tax Law § 480-a(3)(a) for such violations. However, given petitioner's lack of education and understanding of the Tax Law combined with the fact that both inspections conducted by the Division revealed that petitioner sold only properly stamped cigarettes and tobacco products, I believe that it is fair and equitable (Tax Law § 2012) to reduce the penalty to \$500.00 for the first violation and \$1,250.00 for the second violation.

C. The petition of Abdullah Mozeb is granted to the extent indicated in Conclusion of Law "B". The Division of Taxation is hereby directed to modify the notices of determination

issued April 21, 1997 and October 19, 1998 consistent with the conclusions rendered herein.

The petition is in all other respects denied.

DATED: Troy, New York
April 25, 2002

/s/ James Hoefer
PRESIDING OFFICER